



BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Bulletin 2022-03 : Servicer Responsibilities in Public Service Loan Forgiveness

Communications

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Compliance bulletin and policy guidance.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is issuing this Compliance Bulletin and Policy Guidance (Bulletin) regarding the servicing of Federal student loans, including Federal Family Education Loan Program and Perkins loans, for borrowers who may be eligible for Public Service Loan Forgiveness (PSLF). The Limited PSLF Waiver announced by the Department of Education on October 6, 2021 (PSLF Waiver) significantly changes the program's eligibility criteria for a limited period. In communicating with borrowers about the PSLF program, servicers should consider taking certain actions to ensure compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act's (Dodd-Frank Act's) prohibition on unfair, deceptive, or abusive acts or practices (collectively, UDAAPs). In its oversight, the CFPB will be paying particular attention to whether student loan servicers provide complete and accurate information to consumers about the benefits they can receive under the PSLF Waiver and eligibility for PSLF generally.

DATES: This bulletin is applicable on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Matt Liles, Counsel, Office of Supervision Policy at 202-435-7435 or Carolyn Hahn, Senior Counsel, Office of Enforcement at 202-435-7212. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Student debt in the United States recently topped over \$1.75 trillion. PSLF is a benefit provided by Congress to Federal student loan borrowers to earn forgiveness of their Federal student loans after 10 years of public service. The U.S. Department of Education estimates that over 1.3 million student loan borrowers work in jobs that qualify for PSLF; moreover, hundreds of thousands of these borrowers have expressed interest in PSLF by filing forms to certify their public service employment.¹

The CFPB's supervisory work has revealed unfair or deceptive practices by student loan servicers that prevented many borrowers from making progress towards forgiveness. Accordingly, the CFPB is issuing this Bulletin to highlight the significant changes to PSLF eligibility criteria under the new waiver and the CFPB's supervision and enforcement priorities with respect to PSLF and the PSLF Waiver.

The Public Service Loan Forgiveness Program

To qualify for PSLF under the original requirements, a borrower had to make 120 on-time payments on a Direct Loan, while on a qualifying repayment plan, and while working in a qualifying public service job.² In 2018, Congress created Temporary Expanded Public Service Loan Forgiveness (TEPSLF) which allows some borrowers to qualify for forgiveness based on payments made under repayment plans that were previously ineligible.

The PSLF Waiver

In October 2021, in response to the COVID-19 national emergency, the Department of Education announced a temporary easing of some PSLF program requirements to help many previously ineligible borrowers receive forgiveness based on their qualifying public service

¹ PSLF Report, September 2021 *available at* <https://studentaid.gov/sites/default/files/fsawg/datacenter/library/pslf-sep2021.xls>

² 34 CFR 685.219(c).

employment regardless of their loan type or repayment plan.³ Importantly, the PSLF Waiver allows borrowers with Federal Family Education Loan Program (FFELP) and Perkins loans to consolidate into a Direct Loan and receive credit toward loan forgiveness under PSLF for periods of repayment on the earlier loan(s). It also provides the same benefit to existing Direct Consolidation Loan borrowers resulting in the forgiveness of tens of thousands of borrowers' loans automatically.⁴ The PSLF Waiver credits any month that a Federal student loan borrower worked in public service and was in active repayment towards the 120 payments required for PSLF. The PSLF Waiver is intended to address several common problems borrowers have experienced in obtaining loan forgiveness, including where the borrower:

- worked in a qualifying public service job but had Federal loans that were not Direct Loans;
- made payments on a Direct Loan while working in a qualifying public service job, but not on a qualified repayment plan;
- made payments on a Direct Loan while working in a qualifying public service job and on a qualifying repayment plan, but made underpayments or late payments;
- made 120 qualifying payments while working in public service but applied for forgiveness after having left public service;⁵ or
- was a member of the military who did not receive credit for periods of deferment or forbearance while serving on active duty.

The impact of the PSLF Waiver could be large and far-reaching. But many borrowers who could benefit under the PSLF Waiver will need to take affirmative action before the October

³ See Press Release, Federal Student Aid, *Public Service Loan Forgiveness Limited Waiver Opportunity*, available at <https://studentaid.gov/announcements-events/pslf-limited-waiver>.

⁴ See Press Release, Federal Student Aid, *U.S. Department of Education Announces Transformational Changes to the Public Service Loan Forgiveness Program, Will Put Over 550,000 Public Service Workers Closer to Loan Forgiveness*, available at <https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness> (estimating these borrowers will discharge \$1.74 billion in student loan debt).

⁵ PSLF requires borrowers to not only work in public service when they make the 120 qualifying payments, but also when they apply for forgiveness and when it is granted. 34 CFR 685.219(c)(1)(ii)(B-C).

31, 2022 deadline. To take advantage of the PSLF Waiver, borrowers without Direct Loans (such as Perkins loans or FFELP loans) must consolidate into a Direct Consolidation Loan and then file a PSLF form certifying their previous public service employment. Most borrowers who have Direct Loans and want credit for previously non-qualifying payments will need to file PSLF forms certifying their previous periods of public service employment. The Department of Education estimates that 27,000 Direct Loan PSLF borrowers could receive \$2.82 billion in forgiveness merely by certifying periods of prior public service employment that were previously ineligible.⁶

II. Unfair and Deceptive Acts or Practices related to PSLF

The CFPB has authority to oversee student loan servicing, including citing servicers for unfair, deceptive, or abusive acts or practices.⁷ As described in previous *Supervisory Highlights*, CFPB examiners have uncovered deceptive student loan servicing practices, including the following with respect to PSLF.

Deceptive statements to FFELP borrowers about consolidating into a Direct Loan

Prior to the PSLF Waiver, only payments made on Direct Loans qualified for progress towards loan forgiveness under PSLF.⁸ Any payment a borrower made on other types of Federal loans – such as Perkins Loans or FFELP loans – did not count towards the 120 payments required to achieve forgiveness. Instead, to pursue PSLF, Federal student loan borrowers who did not have Direct Loans had to first consolidate those loans into a Direct Consolidation Loan before their payments would begin to count towards forgiveness. Thus, prior to the PSLF

⁶ *Press Release supra* n. 4.

⁷ See title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act Pub. L. No. 111-203, 124 Stat. 1376 (2010) (establishing the CFPB's authority). Under the Dodd-Frank Act, all covered persons or service providers are prohibited from committing unfair, deceptive, or abusive acts or practices in violation of the Act. An act or practice is unfair when (i) it causes or is likely to cause substantial injury to consumers; (ii) the injury is not reasonably avoidable by consumers; and (iii) the injury is not outweighed by countervailing benefits to consumers or to competition. *Id.* at sections 1031, 1036; 12 U.S.C. 5531, 5536. Whether an act or practice is deceptive is informed by decades of precedent involving Section 5 of the Federal Trade Commission Act. See CFPB Exam Manual at UDAAP 5.

⁸ 34 CFR 685.219(c)(1)(iii).

Waiver, borrowers could convert their FFELP or Perkins loans into Direct Consolidation Loans to benefit under the PSLF program.

CFPB examiners have determined that servicers misled borrowers about their loan's PSLF eligibility.⁹ For example, examiners have found that servicers committed a deceptive practice by leading FFELP borrowers to believe that they had no potential course of action to become eligible for PSLF, when the borrowers could consolidate their FFELP loans into a Direct Consolidation Loan and pursue PSLF.¹⁰

Deceptive statements about qualifying public service employment

CFPB examiners also uncovered potentially deceptive statements to PSLF borrowers about whether their jobs qualified for PSLF. For example, examiners have found that servicers risked committing a deceptive practice by telling borrowers that only non-profit jobs qualify for PSLF even though government jobs also qualify.¹¹

Misrepresenting the effect of filing an Employment Certification Form (ECF)

Borrowers previously submitted ECFs signed by their employers to verify their periods of public service employment.¹² CFPB examiners found that servicers committed a deceptive act or practice by misrepresenting the effect of filing the ECF for borrowers who had FFELP loans, but who did not have any Direct Loans. Servicer employees represented to FFELP borrowers that if they submitted an ECF they would learn whether their employment qualified for PSLF. However, borrowers would not receive a determination about employer eligibility because the ECF would be immediately denied because of their ineligible FFELP loans.¹³

⁹ If a supervisory matter is referred to the Office of Enforcement, Enforcement may cite additional violations based on these facts or uncover additional information that could impact the conclusion as to what violations may exist.

¹⁰ *Supervisory Highlights*, Issue 24 – Summer 2021 at 35-37 available at <https://www.consumerfinance.gov/data-research/research-reports/supervisory-highlights-issue-24-summer-2021/>.

¹¹ *Id.* at 36-37.

¹² Borrowers now certify their employment and apply for PSLF on a single consolidated PSLF form.

¹³ *Supervisory Highlights*, Issue 24 – Summer 2021 at 35-36.

III. The CFPB's supervision and enforcement priorities

Prior supervisory observations and consumer complaints show that servicers were not adequately complying with the law, and were making deceptive representations about PSLF before the PSLF Waiver went into effect.¹⁴ As servicers administer the new PSLF Waiver, the CFPB expects servicers to comply with Federal consumer financial protection laws. The CFPB plans to prioritize student loan servicing oversight work in deploying its enforcement and supervision resources in the coming year with a specific focus on monitoring engagement with borrowers about PSLF and the PSLF Waiver. Where the CFPB finds entities have committed UDAAPs related to PSLF and the PSLF Waiver, the CFPB will hold them accountable.

In its student loan servicing oversight work, the CFPB plans to pay particular attention to:

1. Whether servicers of any federal loan type provide complete and accurate information about the PSLF Waiver when discussing PSLF or loan consolidation in any communications;
2. Whether servicers have adequate policies and procedures to recognize when borrowers are expressing interest in PSLF or the PSLF Waiver or whose files otherwise demonstrate their eligibility and to direct those borrowers to appropriate resources;
3. Whether servicers take steps to promote the benefits of the PSLF waiver to borrowers who express interest or whose files otherwise demonstrate their eligibility.

IV. Compliance Management Program Expectations

To prevent unfair, deceptive, or abusive acts or practices, entities should consider enhancing their compliance management systems to develop and implement policies and

¹⁴ See Consumer Financial Protection Bureau (CFPB), *Staying on Track While Giving Back* (June 2017), available at <https://www.consumerfinance.gov/data-research/research-reports/staying-track-while-giving-back-cost-student-loan-servicing-breakdowns-people-serving-their-communities/>.

procedures to ensure that all borrowers receive accurate and complete information about the PSLF Waiver and representatives facilitate their enrollment,¹⁵ including by:

- improving training to make sure representatives effectively identify borrowers who may be pursuing PSLF, who have provided information suggesting that they may benefit from the PSLF Waiver, or who are expressing interest in PSLF or the PSLF Waiver;
- improving training to make sure representatives accurately describe PSLF and the PSLF Waiver, their benefits, the process for applying for PSLF, using the Waiver, and the need to act before the October 31, 2022, deadline, including for representatives that interact with borrowers of FFELP and Perkins loans;
- updating call scripts to prompt representatives to inform borrowers who have provided information suggesting they may benefit from the PSLF Waiver about the benefits of the PSLF Waiver, and the importance of consolidating and filing a PSLF form for every job with an eligible employer before the October 31, 2022, deadline;
- enhancing existing communication tools, such as:
 - posting a dedicated PSLF Waiver information page on the servicer's website that stresses the benefits of the waiver, explains who is eligible for the waiver, provides the steps for using the waiver, and emphasizes the need to apply for the waiver by October 31, 2022;
 - posting a temporary banner on the servicer's main webpage and account log-in webpage advertising the PSLF Waiver and linking the borrower to the dedicated PSLF Waiver information page, and
 - including information on the PSLF Waiver on automated hold messages;

¹⁵ The U.S. Department of Education has issued guidance to FFELP and Perkins loan participants directing them to provide interested borrowers with accurate information about the PSLF Waiver. U.S. Dept. of Ed., Office of Fed. Student Aid, GEN-21-09, *Guidance for FFEL and Perkins Loan Program Participants on the Limited Public Service Loan Forgiveness Waiver* (Dec. 7, 2021), available at <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-12-07/guidance-ffel-and-perkins-loan-program-participants-limited-public-service-loan-forgiveness-waiver>.

- tracking borrower interest in using the PSLF Waiver to allow for targeted follow up;
- monitoring representatives' communications with borrowers about PSLF;
- evaluating these issues through the servicer's quality control/assurance program, compliance testing program, and audit program at appropriate intervals;
- actively monitoring for and addressing systemic issues – such as excessive call hold times – that inhibit PSLF borrowers from getting information from the entity about PSLF;
- regularly reviewing consumer complaints regarding PSLF and ensuring there is an appropriate channel for receiving, investigating, determining root causes, and properly resolving consumer complaints relating to misinformation about PSLF;
- ensuring that borrowers' consolidation decisions are honored timely, including by processing consolidation applications and providing payoff amounts timely; and
- ensuring that borrowers' PSLF forms are processed timely.

Generally, self-identification of Federal consumer financial law violations and developing an effective corrective action plan that includes complete identification of affected populations and complete remediation for injured consumers are important elements of a strong compliance management system. When these violations relate to providing false or misleading information about PSLF, a robust and affirmative outreach strategy to all potentially eligible consumers about the PSLF Waiver, tailored to the borrower's loan type, may be an important component of a corrective action plan. These actions also factor into the CFPB's decision about whether specific violations should be handled through supervisory or enforcement action.

CFPB consideration of proactive efforts by servicers to promote the PSLF Waiver

In exercising its supervisory and enforcement discretion, the CFPB will consider the extent to which entities engage in proactive measures to promote the benefits of the PSLF Waiver to borrowers. For example, servicers can update call scripts to prompt representatives to affirmatively ask borrowers if they work or have worked for a nonprofit or government

organization. In addition, servicers already use the Defense Manpower Database Center (DMDC) or other comparable means to identify military borrowers for purposes of ensuring that borrowers receive the benefits of the Servicemembers Civil Relief Act; they could engage in similar efforts with respect to the PSLF Waiver. Servicers can also identify consumers who previously submitted Teacher Loan Forgiveness applications and then target those groups with PSLF Waiver communications.

The CFPB notes that time is of the essence since the PSLF Waiver closes at the end of October 2022. After the PSLF Waiver closes, direct payments to borrowers may be the primary means of remediating relevant UDAAPs.

V. Conclusion

The CFPB will continue to review closely the practices of student loan servicers for potential UDAAPs, including the practices related to PSLF described above. The CFPB will use all appropriate tools to hold entities accountable if they engage in UDAAPs in connection with these practices.

VI. Regulatory Requirements

The Bulletin constitutes a general statement of policy exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). It is intended to provide information regarding the CFPB's general plans to exercise its supervisory and enforcement discretion for institutions under its jurisdiction and does not impose any legal requirements on external parties, nor does it create or confer any substantive rights on external parties that could be enforceable in any administrative or civil proceeding. Because no notice of proposed rulemaking is required in issuing the Bulletin, the Regulatory Flexibility Act also does not require an initial or final regulatory flexibility analysis. The CFPB has also determined that the issuance of the Bulletin does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be

collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.

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